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SUBJECT: UKRAINE MAKES PROGRESS ON WTO LEGISLATION

REF: A) YARNELL-WOLF EMAIL OF 11/2
B) KASPER-KLEIN EMAIL OF 10/27
C) KYIV 4104
D) KIEV 3670
E) KIEV 3569
F) KIEV 2587

¶11. Summary: Ukraine's Parliament adopted on November 2 two laws identified as required for WTO accession. Parliament made further progress on legislation November 2-3, passing another eight WTO-related laws in the first reading, with significantly large majorities. Parliamentary "hearings" on November 1 revealed a growing sense of inevitability among MPs regarding WTO accession. This Parliamentary activity follows the October 27 informal meeting of Ukraine's WTO Working Party, which stressed the need for speedy progress on the legislative front. Despite concerns

in some quarters regarding the authenticity of the Yanukovych government's professed commitment to WTO accession, it delivered impressively in this first round of voting. Difficult issues remain, however, and the next tests will be whether Parliament is as positive on the more controversial laws, and whether it can avoid the temptation to make WTO-inconsistent changes to the drafts between the first and second readings. End Summary.

Parliament Adopts Two WTO-required Laws

¶12. Parliament adopted two laws identified as required for WTO accession -- an amendment to the law "On Publishing" (to eliminate foreign capital restrictions, with a 5 year transition period) and an amendment to the law "On Protection of Rights for Indications of Origins of Goods" (to ensure national treatment and MFN for GIs) -- on November 2. Parliament adopted these two laws under an accelerated procedure, allowed only if no MPs object, skipping the second reading usually required. (Note: Ref A incorrectly reported that the two laws passed only in the first reading. End Note.) The voting proceeded as follows:

Publishing law - 375 votes for, 0 against, 62 not voting;
GIs law - 390 for, 0 against, 47 not voting.

¶13. These were the first WTO-related laws adopted by Parliament since the March general elections. Ukraine's WTO Working Party will now have the opportunity to examine these laws to ensure that they properly address the concerns and requests of WTO members.

Eight Laws Pass in First Reading

¶4. During November 2-3, Parliament also passed, in the first reading, eight other legislative amendments identified as required for WTO accession:

- to the law "On Advocacy" (to enable foreign attorneys to operate in Ukraine);
- to the law "On the Export Duty for Live Animals and Skins" (to reduce export duty rates);
- to the law "On Amending Some Legislative Acts" (to adjust the license fee for production of spirits, alcohol and tobacco products);
- to the Customs Code (to grant customs officials "Ex Officio" rights in the IPR field);
- to the law "On Banks and Banking Activity" (to allow foreign banks to open subsidiaries in Ukraine);
- to the law "On Foreign Economic Activity" (to amend non-tariff regulation of imports);
- to the law "On Insurance" (to eliminate restrictions on agreements with foreign insurers and to provide permit for re-insurance of risks);
- to the law "On Medicinal Drugs" (to protect undisclosed information in the registration of medicinal drugs).

¶5. These laws all passed by huge margins, generally with nearly 400 MPs voting for and around 20, primarily Communists, voting against, and a few more abstaining. An amendment to the law "On Veterinary Medicine," passed the first reading on October 11 with similarly overwhelming support. This draft, submitted by an MP rather than by the government, may fall short of WTO norms, however.

¶6. From this summer's list of 21 laws needed for accession, Parliament has now successfully adopted two, and passed nine in the first reading. (Note: This includes the Veterinary Medicine law passed on October 11. End note.)

Parliamentary Hearings Clear the Air

¶7. Parliament held public hearings on WTO accession on November 1. These "hearings," attended by observers and diplomats, including Ambassador, consisted essentially of a series of general speeches on the topic of Ukraine's accession, with little substantive discussion of specific legislation. Minister of Economy Volodymyr Makukha briefed MPs on accession progress and made a plea for speedy passage of outstanding legislation. Makukha was backed up by several prominent Our Ukraine MPs, including Foreign Minister Borys Tarasyuk, as well as deputy head of the Presidential Secretariat Arseniy Yatsenyuk.

¶8. A few MPs from the governing coalition raised concerns about how accession would affect certain industries, and urged more extensive deliberations on how to help these industries. Of most concern appeared to be the agricultural sector, highlighted by Minister of Agriculture Yuriy Melnyk's warnings that accession would lead to "mass closures" of smaller producers and dramatic increases in rural unemployment. Overall, a growing sense of inevitability regarding WTO accession seemed to emerge from the hearings. One speaker from a local university tried to capture this sentiment, arguing that the question was no longer "whether" Ukraine will join the WTO, but rather "when and how."

Non-WTO Law Slips Through

¶9. Parliament on November 2 also adopted an amendment to the law "On Protection of Rights on Plant Varieties." (Note: Ref A also incorrectly reported this law as being passed only in the first reading, whereas it too was adopted under the accelerated procedure. End Note.) This plant varieties law was not among the 21 laws identified as required for WTO accession, although there appeared to be

some confusion among MPs on this issue. The law, now passed by Parliament, in fact contains a problematic provision which authorizes the government to use discriminatory measures that would be inconsistent with WTO rules. A draft Cabinet of Ministers Resolution, one of six identified by the GOU as necessary for accession but not yet issued, will essentially have the opposite effect by preventing the government from using such discriminatory measures.

Ukraine's Working Party Urges Legislative Action

¶10. Action in Parliament came on the heels of an October 27 informal meeting of Ukraine's WTO Working Party in Geneva (ref B), where Ukraine's lead WTO negotiator Valeriy Pyatnitskiy reviewed the outstanding legislation.

Pyatnitskiy told Working Party members that he was confident Parliament would adopt much of the legislation within three weeks. Members expressed concern that some of the draft laws under consideration may differ from what was previously agreed. The U.S. delegation and others also noted a lack of progress on several problem areas, such as SPS measures, discriminatory tax treatment for agricultural products, restrictions on grain exports, and agricultural support.

¶11. The Chairman suggested a tentative date of mid-December for the next Working Party meeting, although members stressed that substantive progress on the report would only be possible following Parliament's adoption of legislation. The Chairman also called for Ukraine and its partners to conclude negotiations on bilateral Market Access Agreements as soon as possible. (Note: Bilateral agreements with Taiwan and Kyrgyzstan remain to be signed. End Note.) Likely in response to Ukrainian complaints about the Kyrgyz negotiating position (Ref F), the Chairman cautioned that "any demands on Ukraine should be in line with the WTO framework."

Comment: Yanukovych Government Steps Up to the Plate

¶12. Much has been made of the Yanukovych's government early dithering on WTO accession and of possible back-room deals to synchronize Ukraine's accession with that of Russia (Refs C-E). Although none of the laws voted on so far in Parliament were among the most controversial (e.g. laws affecting the agricultural sector or scrap metal export restrictions), the government has come through impressively in its first chance at bat, garnering a huge majority of coalition and opposition MPs in support. These first rounds of voting are a positive signal for the prospects of significant, speedy progress on the WTO-related legislation. The next tests will be whether the Rada is as positive on the more controversial laws, and whether it can avoid the temptation to make WTO-inconsistent changes to the drafts between the first and second readings.

TAYLOR